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Attorneys for Defendant Daniel P. Murphy

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

ROD UNDERHILL,	)	CASE NO.: 16 CV 1598 AJB WVG
	)	
Plaintiff,	)	Judge: Hon. Jacqueline Nguyen
	)	
vs.	)	ANSWER TO THE COMPLAINT
	)	
DANIEL P. MURPHY and STEVEN	)	
KORNBLUM	)	
Defendants.	)	
	)	

Defendant DANIEL P. MURPHY ("Defendant") answers the Complaint of  
Plaintiff Rod Underhill ("Plaintiff") follows:

1. Defendant admits the allegations contained in  
paragraph 1 of the Complaint.

2. Defendant admits the allegations contained in  
paragraph 2 of the Complaint.

3. Defendant lacks knowledge or information sufficient to enable

1 him to form a belief as to the truth of the allegations in paragraph 3 of the Complaint,  
2 and based thereon denies each and every allegation of paragraph 3 of the Complaint.

3  
4 4. Defendant lacks knowledge or information sufficient to enable  
5 him to form a belief as to the truth of the allegations in paragraph 4 of the Complaint,  
6 and based thereon denies each and every allegation of paragraph 4 of the Complaint.

7  
8 5. Defendant lacks knowledge or information sufficient to enable  
9 him to form a belief as to the truth of the allegations in paragraph 5 of the Complaint,  
10 except that Defendant is a resident of the County of San Diego and based thereon  
11 denies all other allegations of paragraph 5 of the Complaint.  
12

13 6. Defendant lacks knowledge or information sufficient to enable  
14 him to form a belief as to the truth of the allegations in paragraph 6 of the Complaint,  
15 except that Defendant is a resident of the County of San Diego and based thereon  
16 denies all other allegations of paragraph 6 of the Complaint.  
17

18 7. Defendant lacks knowledge or information sufficient to enable  
19 him to form a belief as to the truth of the allegations in paragraph 7 of the Complaint,  
20 and based thereon denies all the allegations of paragraph 7 of the Complaint.  
21

22 8. Defendant denies each and every allegation of paragraph 8 of the  
23 Complaint.  
24

25 9. Defendant denies each and every allegation of paragraph 9 of the  
26 Complaint.  
27

28 10. Defendant incorporates its responses to the allegations in

1 paragraphs 1 through 9 of the Complaint as if fully set forth herein.

2 11. Defendant admits that 18 U.S.C. § 2510 (12) states what it states.

3 12. Defendant admits that 18 U.S.C. § 2701 states what it states.

4 13. Defendant admits that Senate Report No. 99-541, S. REP. 99-54,  
5 35 1986 U.S.C.C.A.N 3555, 3589 states what it states.

6 14. Defendant denies each and every allegation of paragraph 14 of the  
7 Complaint.

8 15. Defendant denies each and every allegation of paragraph 15 of the  
9 Complaint.

10 16. Defendant incorporates its responses to the allegations in  
11 paragraphs 1 through 15 of the Complaint as if fully set forth herein.

12 17. Defendant denies each and every allegation of paragraph 17 of the  
13 Complaint, except that he admits that 18 U.S.C. §§ 2510 and 2511(1) state what they  
14 state.

15 18. Defendant denies each and every allegation of paragraph 18 of the  
16 Complaint.

17 19. Defendant admits that 18 U.S.C. § 2520 states what it states.

18 20. Defendant denies each and every allegation of paragraph 20 of the  
19 Complaint.

20 21. Defendant denies each and every allegation of paragraph 21 of the  
21 Complaint.



1           22.           Defendant denies each and every allegation of paragraph 22 of the  
2 Complaint.

3  
4           23.           Defendant incorporates its responses to the allegations in  
5 paragraphs 1 through 22 of the Complaint as if fully set forth herein.

6           24.           Defendant denies each and every allegation of paragraph 24 of the  
7 Complaint.

8  
9           25.           Defendant denies each and every allegation of paragraph 25 of the  
10 Complaint.

11  
12           26.           Defendant admits that California Penal Code § 502 states what it  
13 states.

14           27.           Defendant denies each and every allegation of paragraph 27 of the  
15 Complaint.

16  
17           28.           Defendant denies each and every allegation of paragraph 28 of the  
18 Complaint.

19  
20           29.           Defendant denies each and every allegation of paragraph 29 of the  
21 Complaint.

22           30.           Defendant admits that California Penal Code § 502 states what it  
23 states.

24  
25           31.           Defendant denies each and every allegation of paragraph 31 of the  
26 Complaint.

27  
28           32.           Defendant denies each and every allegation of paragraph 32 of the

1 Complaint.

2 33. Defendant denies each and every allegation of paragraph 33 of the

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4 Complaint.

5 34. Defendant denies each and every allegation of paragraph 35 of the

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7 Complaint.

8 35. Defendant denies each and every allegation of paragraph 35 of the

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10 Complaint.

11 36. Defendant denies each and every allegation of paragraph 37 of the

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13 Complaint.

14 37. Defendant denies each and every allegation of paragraph 38 of the

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16 Complaint.

17 38. Defendant incorporates its responses to the allegations in  
18 paragraphs 1 through 38 of the Complaint as if fully set forth herein.

19 39. Defendant admits that California Penal Code § 631(a) states what  
20 it states.

21 40. Defendant denies each and every allegation of paragraph 41 of the  
22 Complaint.

23 41. Defendant denies each and every allegation of paragraph 42 of the  
24 Complaint.

25 42. Defendant denies each and every allegation of paragraph 43 of the  
26  
27 Complaint.  
28

1           43.           Defendant denies each and every allegation of paragraph 44 of the  
2 Complaint.

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4           44.           Defendant denies each and every allegation of paragraph 43 of the  
5 Complaint.

6           Affirmative Defenses

7  
8           1.           Plaintiff's claims are barred by the doctrine of laches.

9           2.           Plaintiff's claims are barred by his unclean hands.

10          3.           Plaintiff's claims are barred by the statute of limitations.  
11  
12 including but not limited to 18 U.S.C. § 2520.

13          4.           The fourth cause of action for violation of California Penal Code  
14 section 631 fails to state a cause of action.

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16          5.           Plaintiff's claims are barred by the doctrines of waiver and  
17 estoppel. From July 10, 2010 until his termination on June 30, 2012, Plaintiff was the  
18 Chief Technology Officer of Eardish Corporation. In connection with a settlement of  
19 post-employment litigation between Plaintiff and Eardish Corporation, Plaintiff  
20 voluntarily provided the company with what he represented was a full and complete  
21 copy of all of his Eardish emails, in excess of 6000 pages, which included  
22 communications from [MP3Rod@aol.com](mailto:MP3Rod@aol.com) account and he also returned a company  
23 owned iMAC, which contained additional communications and documents on its hard  
24 drive.  
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1 Dated: July 20, 2016

Carter Sands, LLP

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3  
4 By: 

Eugene P. Sands  
Attorneys for Defendants  
DANIEL P. MURPHY